



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 27, 1992

Honorable John D. Whitlow
Criminal District Attorney
for Calhoun County
P. O. Box 1001
Port Lavaca, Texas 77979

OR92-37

Dear Mr. Whitlow:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14331.

You have received a request for information relating to a former employee of the Calhoun County Sheriff's Department (the "department"). Specifically, the requestor seeks all complaints filed against the employee; information relating to the grounds of his termination; copies of all correspondence between the polygraph examiner and the department and between the Sheriff and any deputy, investigator, or employee of the department concerning the former employee; personnel manuals; the former employee's complete personnel file; and the jail records and criminal files of a named individual. You have forwarded to us for review several witness statements, jailer's daily log information, mug shots, information relating to your investigation of the former employee, and the jail and criminal records of the named individual. You claim that this information is excepted from required public disclosure under sections 3(a)(2), 3(a)(3), 3(a)(7), 3(a)(8), 3(a)(9), and 3(a)(11) of the Open Records Act. You inform us that the remainder of the requested information will be made available to the requestor.

Previous open records decisions issued by this office resolve your request. Section 3(a)(8) excepts from required public disclosure

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

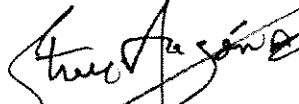
Open Records Decision No. 474 (1987) at 4 held that where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 3(a)(8) may be invoked by any proper custodian of information that relates to the incident. When section 3(a)(8) is claimed, it must be determined whether release of the information would undermine a legitimate interest of law enforcement or prosecution, and a case-by-case approach is necessary. Open Records Decision No. 434 (1986). A person's criminal history record is excepted from required public disclosure by section 3(a)(8). *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) at 187-88; *see also* Open Records Decision Nos. 144, 127 (1976) at 6.

We have reviewed the documents submitted to us and conclude that they may be withheld from required public disclosure under section 3(a)(8). Except for the mug shots and the criminal history information concerning the named individual, the submitted materials, on their face, would unduly interfere with the ongoing criminal investigation if released and may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act. The mug shots and the criminal history records constitute the kinds of information specifically made confidential by *Houston Chronicle* and may be withheld from required public disclosure under section 3(a)(8). As we resolve this matter under section 3(a)(8), we need not address the applicability of sections 3(a)(2), 3(a)(3), 3(a)(7), 3(a)(9), and 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-37.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragon", is written over a diagonal line that extends from the signature down towards the typed name.

Steve Aragon
Assistant Attorney General
Opinion Committee

SA/GK/lcd

Ref.: ID# 14331
ID# 14387

cc: Mr. Alex R. Hernandez
Hernandez and Hood
P. O. Box 127
Port Lavaca, Texas 77979